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# State v. Adams Respondent's Brief Dckt. 43791

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	No. 43791
Plaintiff-Respondent,	)	
	)	Canyon Co. Case No.
vs.	)	CR-2006-6549
	)	
CLAYTON ROBERT ADAMS,	)	
	)	
Defendant-Appellant.	)	
_____	)	

**BRIEF OF RESPONDENT**

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF CANYON**

**HONORABLE RENAE J. HOFF  
District Judge**

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## STATEMENT OF THE CASE

### Nature of the Case

Clayton Robert Adams appeals from the district court's order denying his motion for credit for time served on his sentence for aggravated battery.

### Statement of Facts and Course of Proceedings

The Idaho Court of Appeals summarized the facts underlying Adams' convictions for second degree murder and aggravated battery as follows:

Three friends, Tyler Gorley, Stephen Maylin and Mikeal Campbell, were leaving a Caldwell bar at closing time when they ran into Adams and his friend, Sergio Madrigal, outside the entrance. Campbell spoke to Adams, whom he knew, and the group decided to go to a private party at another location, with the intent to buy beer and drop off Maylin at his home along the way. The five men got into Adams' car. According to the State's evidence at Adams' subsequent trial, the following events then unfolded. En route, Adams asked for beer and gas money from Gorley, Maylin and Campbell, and when he was told that they had no money, Adams became enraged. Adams told the men that he had a knife and a gun and that someone was going to get hurt if he was not given money. In an apparent attempt to scare the men into compliance, Adams started driving recklessly, speeding and running stop lights and stop signs. Gorley, Maylin and Campbell demanded to be let out of the car, but Adams initially refused to stop. Eventually, Adams slammed on his brakes in the middle of a rural road, and the three men got out of the car to escape from him. Campbell was successful in doing so but the other two men were not. As Maylin was exiting by the left-rear passenger door, he was met by Adams, who stabbed Maylin once in the side before Maylin got away. Adams then stabbed Gorley five times, killing him. Adams then got back in his car and drove away, with Madrigal still a passenger. The two men then bought beer, unsuccessfully looked for the party and then drove to Adams' home where he was arrested.

Adams was charged with first degree premeditated murder, or in the alternative, first degree felony murder, three counts of attempted robbery, and one count of aggravated battery. The jury acquitted on the first degree murder charges and the attempted

robbery charges, but found Adams guilty of the lesser offense of second degree murder and of aggravated battery. The district court imposed a unified life sentence with twenty-five years determinate for second degree murder and a consecutive ten-year sentence with three years determinate for aggravated battery.

State v. Adams, 147 Idaho 857, 859-860, 216 P.3d 146, 148-149 (Ct. App. 2009).

In a later appeal, the Idaho Court of Appeals explained the proceedings that ensued:

Adams filed an Idaho Criminal Rule 35 motion for reduction of his sentences, which the district court denied. In 2009, this Court affirmed Adams' conviction and sentences. Adams subsequently filed a petition for post-conviction relief and the district court granted him a new sentencing hearing on the second degree murder charge. At resentencing, the district court again imposed a unified life sentence with a twenty-five-year determinate term.

(R., pp.22-23.)<sup>1</sup> Following Adams' re-sentencing for second degree murder, the Idaho Court of Appeals again affirmed his conviction and sentence, and the Remittitur was entered on August 31, 2015. (R., pp.22-24.)

On November 2, 2015, Adams filed a Motion for Credit for Time Served pursuant to Rules 35(a) and 36, I.C.R., with a supporting memorandum. (R., pp.25-29.) Adams argued that his sentences must run concurrent because: (1) the original second degree murder sentence was vacated in the post-conviction

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<sup>1</sup> On February 2, 2016, the Idaho Supreme Court entered an "Order Augmenting Appeal No. 42667 and Take Judicial Notice of Appeal No. 34220." That order augmented the appellate record in this case with the Clerk's Record, Reporter's Transcripts and Exhibits filed electronically Docket No. 42667, and took judicial notice of the same items filed electronically in Docket No. 34220. (Id.) Adams has also requested "this Court to take judicial notice of its file in the appeal in his post-conviction case, *Adams v. State*, S.C. Docket No. 42920[,] which will also be referenced. (Appellant's Brief, p.2, n.2.) Unless otherwise indicated, all references to the Clerk's Record, Reporter's Transcripts and Exhibits will be to this appeal, Docket No. 43791.

proceeding, therefore, there was no contemporaneous sentence for his aggravated battery sentence to run consecutive to, and (2) because the district court did not expressly state at the re-sentencing hearing that the new sentence for second degree murder was consecutive to the aggravated battery sentence (or vice versa), the sentences could only run concurrent. (Id.) On November 18, 2015, the district court entered an order denying Adams' motion for credit for time served. (R., pp.66-67.) Adams filed a timely notice of appeal from that order. (R., pp.68-69.)

## ISSUE

Adams states the issue on appeal as:

Did the district court err when it denied Mr. Adams' motion for credit for time served?

(Appellant's Brief, p.5.)

The state rephrases the issue on appeal as:

Has Adams failed to show error in the denial of his request for credit for time served on his sentence for aggravated battery?



## ARGUMENT

### Adams Has Failed To Show Error In The Denial Of His Request For Credit For Time Served On His Sentence For Aggravated Battery

#### A. Introduction

Adams challenges the denial of his motion for credit for time served, arguing that he is entitled to credit on his aggravated battery sentence because it should run concurrent with his sentence for second degree murder. (Appellant's Brief, pp.6-13.) Contrary to Adams' assertions, he has failed to show any error in the denial of his motion for credit for time served.

#### B. Standard Of Review

"The question of whether a sentencing court has properly awarded credit for time served to the facts of a particular case is a question of law, which is subject to free review by the appellate courts." State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005) (citing State v. Hale, 116 Idaho 763, 779 P.2d 438 (Ct. App. 1989)). The appellate courts "defer to the trial court's findings of fact, however, unless those findings are unsupported by substantial and competent evidence in the record and are therefore clearly erroneous." State v. Covert, 143 Idaho 169, 170, 139 P.3d 771, 772 (Ct. App. 2006) (citing State v. Davis, 139 Idaho 731, 734, 85 P.3d 1130, 1133 (Ct. App. 2003)).

#### C. The District Court Correctly Denied Adams' Motion For Credit For Time Served On His Sentence For Aggravated Battery

On appeal, Adams specifically contends: (1) because the original second degree murder sentence was vacated for re-sentencing, "[i]t could thusly not be

served consecutive to any other sentence, for no other sentence existed” (Appellant’s Brief, p.9); (2) because, upon re-sentencing, “the district court did not specify whether the second degree murder sentence was to be served concurrently with or consecutive to any other sentence . . . [it] could only be concurrent” and the court’s attempt to reaffirm the consecutive nature of the aggravated battery charge in the Amended Judgment and Commitment was ineffectual (*id.*, pp.9-11); and (3) because a sentence cannot be partly consecutive and partly concurrent, he is entitled to credit for time served for aggravated battery since his 2007 sentencing (*id.*, pp.11-12). Adams’ arguments fail for the following reasons.

Even assuming, *arguendo*, that Adams’ original sentence for second degree murder was “vacated” by either the district court’s oral ruling at the June 23, 2014 summary dismissal motion hearing (see #42920 Tr., p.80, L.17 – p.85, L.24), or the resultant Order on Summary Dismissal (see #42920 R., Vol. 3, pp.1894-1895), his sentence for aggravated battery has consistently remained consecutive to his sentence for second degree murder.<sup>2</sup>

Adams’ original Judgment and Commitment reads in relevant part:

**IT IS ADJUDGED** that the defendant be sentenced on Count I,<sup>[3]</sup> to the custody of the Idaho State Board of Corrections for a minimum period of confinement of twenty five (25) years, and a subsequent indeterminate period of confinement not to exceed life, for a total aggregate term of life, and the defendant be sentenced on Count II,

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<sup>2</sup> There is no indication in the record that the court “vacated” Adams’ sentence for second degree murder, vis-à-vis, ordered re-sentencing. (See R., pp.36-62; #42920 R., Vol. 3, pp.1669-1673, 1894-1895, 1933; #42920 6/23/14 Tr.)

<sup>3</sup> Count I is second degree murder and Count II is aggravated battery. (R., pp.33-34.)

to the custody of the Idaho State Board of Corrections for a minimum period of confinement of three (3) years, and a subsequent indeterminate period of confinement not to exceed seven (7) years, for a total aggregate term of ten (10) years, with *said sentences to run consecutively*.

(R., pp.33-34 (emphasis added).) The district court could not have stated its intent any more clearly -- “said sentences to run consecutively.” (Id.)

At the October 15, 2014 re-sentencing hearing, the district court gave Adams the same sentence it originally ordered -- unified life with 25 years fixed. (R., pp.31-32 (Amended Judgment and Commitment), 62 (re-sentencing hearing transcript).) The Amended Judgment and Commitment also stated:

**IT IS FURTHER ORDERED** that the sentence previously imposed on May 8, 2007, with regards to the charge of Aggravated Battery in Count II, and as set forth in the Judgment and Commitment filed May 15, 2007, *shall remain as reflected in said judgment*.

(R., p.32 (emphasis added).) Inasmuch as the 2007 Judgment and Commitment reflects that the two sentences were ordered “to run consecutively” *to each other* (R., pp.33-34), the court’s 2014 Amended Judgment and Commitment reaffirmed that the aggravated battery sentence was to run consecutive to the second degree murder sentence. Adams’ aggravated battery sentence has consistently been ordered to run consecutive to his second degree murder sentence.

Nonetheless, Adams argues, “once the second degree murder charge [sic]<sup>[4]</sup> was vacated, the aggravated battery was *consecutive to nothing* . . . [and because] [i]t was therefore no longer a consecutive sentence, it was

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<sup>4</sup> The second degree murder *charge* was never vacated. The district court ordered that Adams be re-sentenced on his conviction for second degree murder.

concurrent.”<sup>5</sup> (Appellant’s Brief, p.11 (emphasis added).) Adams’ assertion that once his sentence for second degree murder was (arguably) vacated, his aggravated battery sentence was “consecutive to nothing,” is incorrect.

Idaho Code § 18-308 states:

**Successive terms of imprisonment.** -- When any person is convicted of two (2) or more crimes before sentence has been pronounced upon him for either, the imprisonment to which he is sentenced upon the second or other subsequent conviction, in the discretion of the court, may commence at the termination of the first term of imprisonment to which he shall be adjudged, or at the termination of the second or other subsequent term of imprisonment, as the case may be.

Adams’ argument that, after his second degree murder sentence was vacated, there was nothing for his aggravated battery sentence to run concurrent to, is erroneous. Under I.C. § 18-308, the district court had discretion, after Adams was convicted of his crimes, to order either (of both) of the sentences to run consecutive with the other. Adams did not have to be sentenced for second degree murder – only convicted of that crime -- in order for his aggravated battery sentence to run consecutive to it. Because I.C § 18-308 gave the district court such discretion, Adams’ argument must be rejected.

Adams further asserts, “[w]here the district court did not specify that the second degree murder was consecutive to the aggravated battery the oral pronouncement controls, and the sentences are concurrent.” (Appellant’s Brief, p.11.) Adams’ focus on the district court’s silence about whether his *second degree murder* sentence ran consecutive to the aggravated battery sentence is

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<sup>5</sup> Logically, if there was no sentence for his aggravated battery sentence to run consecutive to, there likewise was no sentence for it to run concurrent with.

misplaced. The issue is whether his *aggravated battery* sentence had been changed (from consecutive) to run concurrent with his second degree murder sentence. As previously shown, the “consecutive” nature of Adams’ aggravated battery sentence has steadfastly remained intact. It is irrelevant that the district court did not orally order, during the re-sentencing hearing, that the sentence for second degree murder would run consecutive to the aggravated battery sentence.

Adams next contends that the court’s statement in the Amended Judgment and Commitment -- that the 2007 sentence for aggravated battery “shall remain as reflected in said judgment” -- was “ineffective.”<sup>6</sup> (Appellant’s Brief, p.10.) He argues that, because “the oral pronouncement controls . . . any attempt to modify the sentences by correcting or altering the sentences in a written order was invalid[.]” (Id.) Obviously, the “oral pronouncement” priority rule pertains to the sentence that is in question. Here, employing that rule makes no sense because the court re-sentenced Adams for second degree murder, not aggravated battery. Moreover, the court’s statement that the 2007 aggravated battery sentence “shall remain as reflected in said judgment” (R., p.32) cannot in any way be deemed an attempt to modify or alter the 2007 sentence – it is just the opposite.

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<sup>6</sup> The second reason Adams gives for labeling the district court’s statement as “ineffective” is that it “was required to make the later-imposed sentence (the second degree murder) consecutive to the sentence imposed first (the aggravated battery) once the sentence was orally pronounced on the defendant.” (Appellant’s Brief, p.10.) As discussed, that argument is irrelevant to the question of whether Adams’ aggravated battery sentence runs consecutive to his second degree murder sentence.

Finally, Adams argues that he “is entitled to credit for time served on the aggravated battery since his 2007 sentencing.” (Appellant’s Brief, pp.11-13.) This argument fails because it relies on his assertion that his aggravated battery sentence was rendered “concurrent” in 2007 when the post-conviction court granted him a re-sentencing hearing on second degree murder, thus (he argues) making his aggravated battery sentence concurrent. As shown above, Adams’ “concurrent sentence” argument does not hold true. As a result, Adams’ argument that his aggravated battery sentence began to run concurrently with his second degree murder sentence in 2007 because „[a] singular sentence simply cannot be partially concurrent and partially consecutive to another sentence” (id., p.11 (quoting Mickelsen v. Idaho State Corr. Inst., 131 Idaho 352, 355, 955 P.2d 1131, 1134 (Ct. App. 1998)), is untenable, and must also be rejected.

In sum, the district court correctly determined that Adams was not entitled to credit for time served on his aggravated battery sentence because it was consistently ordered to run consecutive to his sentence for second degree murder. That Adams was re-sentenced for second degree murder did nothing to change the consecutive nature of his aggravated battery sentence. Adams has failed to show any basis for reversal.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Adams' motion for credit for time served.

DATED this 14<sup>th</sup> day of September, 2016.

/s/ John C. McKinney  
JOHN C. McKINNEY  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 14<sup>th</sup> day of September, 2016, served a true and correct copy of the attached BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

/s/ John C. McKinney  
JOHN C. McKINNEY  
Deputy Attorney General